IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.66 OF 2006
WITH
CRIMINAL APPLICATION NO.67 OF 2006
WITH
CRIMINAL APPLICATION NO.68 OF 2006

Beta Instrument Co. (I) Pvt.
and Anr. .. Applicant
Versus
M/s.Ambica Combines & Anr. .. Respondents

Mr.S.G.Deshmukh i/b. A.M.Joshi for applicants
Mr.R.S.kate for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th November 2006.

P.C.:-

. These criminal revision applications are at the instance of the accused who have been convicted and sentenced for offences punishable under section 138 read with 141 of N.I. Act 1888

as amended in 1988.

2. Mr.Deshmukh, learned Counsel for the applicants in all these applications has raised a sole contention that the complaint instituted by the first respondent was not maintainable. It is contended that the complainant is a sole proprietary firm. The sole proprietary firm's Proprietor is Nilesh A. Doshi. The complaint is not filed by the sole proprietor but by one Sunil Kumar Doshi. In other words after inviting my attention to section 141 of N.I.Act, Mr.Deshmukh submits that the complainant is neither the payee nor holder in due course of the cheque and, therefore, the complaint was not maintainable. Assuming without admitting that the complaint was filed by the sole proprietory concern which has no independent existence in law other than the sole proprietor, yet, the presentation thereof by the Manager Sunil Kumar Doshi was at no stage authorised by the sole proprietor Nilesh Doshi.

The authority letter produced during the course of trial even if exhibited, does not cure this defect and complaint was, therefore, ex facie not maintainable. On this ground alone the complaint should have been dismissed, according to Mr.Deshmukh. In all fairness Mr.Deshmukh brings to my notice the decision of the Supreme Court in the case of M/s.M.M.T.C. Ltd. and Anr. Vs. Medchl Chemicals and Pharma (P) and Anr._ reported in A.I.R. 2002 S.C. 182 which has been relied upon by the Courts below. However, he submits that the said decision was rendered in a case of limited company which has been presumed to be an unnatural and artificial person and, therefore, capable of being represented only by a natural person or human being. That decision cannot be of any assistance in resolving this controversy. He relies upon two decisions, one rendered by learned Single Judge of Andhra Pradesh High Court (2005 ALL MR (Cri) Journal 129 - Sangothu Narasimha Chary Vs. V. Raghunath

& Anr.) and other also by a Division Bench of Andhra Pradesh High Court.(2002 CRI.L.J. 2621 - S.P.Sampathy and etc. Vs. Smt.Manju Gupta and Anr. etc).

3. Mr.Kate for original complainant on the other hand submits that the above contentions of Mr.Deshmukh should not be entertained. More so, when all allegations in the complaint are admitted and the conviction and sentence is not challenged on any other ground. He submits that during the course of trial, the alleged defect was permitted to be cured by production of authority letter issued by the sole proprietor. The Sole Proprietor has stepped into the witness box. The authority letter has been taken on record and exhibited. In other words, it has been marked in evidence after its existence and contents are proved. The moment said letter is taken on record, then, the alleged technical defect ceases to exist and the decision of the

Supreme Court would, therefore, apply. In any event, considering the above facts and circumstances, the view taken concurrently is a possible view of the matter. This Court in its Revisional jurisdiction, therefore, should not interfere with the same.

4. With the assistance of the learned Counsel for both sides, I have perused the relevant statutory provisions and the decisions brought to my notice. Mr.Deshmukh has also taken me through the complaint, a copy of which is annexed as Annexure A to these applications. This complaint is filed by M/s.Ambika Combines. This is admittedly a sole proprietary firm. However, the title of the complaint reads that the complainant is a sole proprietorship through its manager Sunil Kumar Doshi. In the complaint itself, it is mentioned that it is dealer of electrical and hardware material and the Revision Applicants are its customers. Some goods were

purchased by the accused and cheques drawn in favour of the complainant, were dishonoured on presentation. While the manager was being examined on oath, he had stated that he is authorised by the complainant (sole proprietor) to file the complaint and that the complainant firm is dealer of electrical and hardware material and he knows the accused who is customer of the complainant.

5. All that has happened is that this Sunil Kumar Doshi did not produce any Authority letter. In his cross examination, he was asked certain questions and in reply thereto, he states that he is the Manager of the complainant but no documentary evidence on record is filed to show that he is the Manager. The material portion of his deposition is that at the time of filing of complaint, the complainant did not authorise the Manager/Sunil Kumar Doshi to file the same.

6. It is not disputed that the complainant is a sole proprietary concern and its sole proprietor also stepped into the witness box. In his deposition, a copy of which is at page 30, it is stated by him that he is the sole proprietor. He had business dealings with the accused. Sunil Kumar Doshi who is manager of the complainant firm. The Manager was authorised to lodge complaint by authority letter dated 1st January 2001. The authority letter is, thereafter, proved in accordance with law and it is exhibited. Complaint was filed on 5th December 2001. Authority Letter is dated 1st January 2001 and is taken on record.

7. In my view, therefore, in the facts and circumstances of the present case, it cannot be said that the Courts below were in any error in holding that the complaint is maintainable. There is no dispute that the complainant is sole proprietary concern which is payee in this case.

All that is alleged is that the payee having not filed the complaint nor is there anything to indicate that the complainant instituting the complaint or presenting it, is authorised by the sole proprietor, the same is not maintainable. However, such a defect was cured by the sole proprietor himself stepping into the box and producing the Authority letter, which was duly exhibited. No fault can be found with this approach adopted by the Courts below. There is no prohibition in law for the complainant (sole proprietor) stepping in the witness box. Once, there is no prohibition for his stepping in and also in his producing the Authority Letter, then, the Courts below were right in relying upon the same. Reliance is placed on the Authority Letter after the contents thereof so also its existence is proved. In such circumstances, there is much substance in the contention of Mr.Kate that the complaint was rightly held to be maintainable. Such a view does not warrant interference in the

Revisional Jurisdiction of this Court. The Jurisdiction is to be exercised to see that the orders of the Courts below are not vitiated by material irregularities resulting in manifest injustice or there is any error of jurisdiction which would warrant interference.

8. The Supreme Court decision in the case of M/s.M.M.T.C. Ltd. and Anr. Vs. M/s.Dedchi Chemicals and Pharma (P) Ltd. and Anr., reported in A.I.R. 2002 S.C. 182 has set at rest all controversies. After relying upon the earlier decisions, the Supreme Court has observed that no Magistrate shall insist that the particular person whose statement is taken on oath at the first instance alone can continue to represent the company till the end of the proceedings. It has been held that there may be occassions when different persons can represent company. It has also been held that it is open to the de jure complainant to seek permission of the Court for

sending any other person to represent the company in the Court. Thus, initial lack of authority is a defect which can be cured at a later stage. In my view, considering the object and purpose for which the Act has been amended, a technical view is likely to defeat and frustrate the very purpose thereof. The complaints are not to be thrown out for defects which can be rectified and cured. Merely because, the word "Company" appears in the decision of the Supreme Court, it is not possible to agree with Mr.Deshmukh that the Supreme Court decision must be restricted in its application to a case of a "Company" incorporated under the Companies Act, 1956. Once the observations have been made in the context of setting in motion the criminal law, then, in my view, this decision must apply to a complaint by a person which is either a firm or a company.

9. The decisions of the learned Single Judge and Division Bench of A.P. High Court are

distinguishable on facts. If the decision of the learned Single Judge is perused, it is apparent that the complaint was silent so also no attempt was made by the sole proprietor to place on record the fact that the complainant is Rachana Refrigerators i.e. payee of the cheque. It is in those circumstances that the observations have been made. It is in these circumstances and in the peculiar factual background that the observations have been made. In fact, para 5 of the learned Single Judge's decision would run contrary to the pleas of Mr.Deshmukh and far from supporting the applicants before me, they would support the complainant. The decision of Division Bench must also be seen in the backdrop of the facts. There the power of attorney holder was held to be not authorised. The lack of pleading again is the basis for making the observations. In these circumstances, even the Division Bench decision is also distinguishable.

10. Since I find that there is no substance in the contentions raised before me, there is no merit in these revision applications. Revision applications are accordingly dismissed. Ad-interim order passed by this Court records that the entire amount under the dishonoured cheque has been brought in this Court. As has been pointed out by the Supreme Court, this does not wipe out the guilt but is a factor which must be held to be relevant for the purpose of awarding sentence. In this case, sentence awarded by the trial court and confirmed by the lower appellate court is R.I. for six months and fine of Rs.5000 and in default R.I. for one month. The compensation is Rs.25,000/-.

11. Mr.Deshmukh prays for leniency inasmuch as according to learned Counsel, the amounts under the cheques which have been dishonoured have been brought in and deposited in this Court. The total sum in all nine cheques comes to around

Rs.2,25,000/-. He, therefore, submits that in the light of this subsequent development, the sentence be appropriately reduced.

12. Mr.Kate objects and submits that apart from raising technical objections in this Court and delaying the payment of amounts for all these years shows lack of bonafides. They are, therefore, disentitled from invoking the equitable and discretionary jurisdiction of this Court. Therefore, the sentence be maintained.

13. In the light of the deposit of amounts in this Court and the fact that the applicants have no objection to the same being paid over to original complainant, in my view, the sentence of R.I. for six months and fine of Rs.5000/- deserves to be reduced in the peculiar facts of this case. It is, therefore reduced to R.I. for one month. The applicants shall in addition to the sum of Rs.2,25,000/- pay compensation of

Rs.25,000/- as well to original complainant. The same be paid within a period of eight weeks from today.

14. At this stage, Mr.Deshmukh prays for continuation of ad-interim order for a period of Twelve weeks from today to enable the applicants to take up the matter in superior court. The request is opposed. Taking an overall view of the matter, in my view, interest of justice would be sub-served if the interim order is continued for a period of eight weeks from today. C.C. expedited. Revision dismissed. Except for modification in sentence, all revision applications are summarily dismissed.

(S.C.Dharmadhikari, J)